Academic Treatment of Abortion and Euthanasia in Leading Constitutional Law Textbooks

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ACADEMIC TREATMENT OF
ABORTION AND EUTHANASIA
IN LEADING CONSTITUTIONAL LAW
TEXTBOOKS

PROLIFE CENTER AT THE UNIVERSITY OF ST. THOMAS

In order to "identify, catalog, and respond to current academic
coverage of abortion, infanticide, and euthanasia in law school
teaching materials," the five leading textbooks for Constitutional
Law courses were analyzed. These texts include: *Cases and
Materials on Constitutional Law: Themes for the Constitution's
Third Century* by Daniel A. Farber, William N. Eskridge, Jr., and
Philip P. Frickey; 2 *Constitutional Law* by Geoffrey R. Stone, Louis
Michael Seidman, Cass R. Sunstein, Mark V. Tushnet, and Pamela S.
Karlan; 3 *Constitutional Law* by Kathleen M. Sullivan and Gerald
Gunther; 4 *Constitutional Law: Cases and Notes* by Ronald D.
Rotunda; 5 and *Constitutional Law: Cases and Materials* by Jonathan
D. Varat, William Cohen, and Vikram D. Amar. 6

Many of the texts include lengthy excerpts of the relevant
cases in both abortion and euthanasia jurisprudence, with only a
couple textbooks providing substantial notes and questions after the
edited opinions. This report will first analyze the textbooks' treatment

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4. KATHLEEN M. SULLIVAN & GERALD GUNTHER, CONSTITUTIONAL LAW (17th ed. 2010).
of euthanasia, followed by an analysis of the treatment of abortion. Because the textbooks surveyed do not include a separate discussion of infanticide, this report does not include a specific summary of the textbooks' approaches to that issue.

**EUTHANASIA**

FARBER, ESKRIDGE, JR., AND FRICKEY

The text's treatment of euthanasia only includes the edited opinion of *Washington v. Glucksberg*, providing approximately four pages of excerpts from the majority opinion, as well as portions of: Justice O'Connor's concurrence, Justice Stevens' concurrence in judgment, Justice Souter's concurrence in judgment, and Justice Breyer's concurrence in judgment. One note following the *Glucksberg* opinion recognizes the difficulty in identifying the holding of the case and includes an argument from David Orentlicher, stating "in effect, by endorsing potentially lethal sedation of terminal patients (which is normally accompanied by withholding of hydration and nutrition), the Court has rejected assisted suicide only to embrace euthanasia." This same note illustrates how Chief Justice Rehnquist "sidesteps any criticism of *Roe* or *Casey*" and "avoids any reliance on *Bowers.*" Another note highlights the difference in approaching substantive due process and historical practices, exemplified by Justice Souter and Chief Justice Rehnquist's respective opinions. This note concludes with a quotation from Richard Fallon's *The Supreme Court, 1996 Term—Foreword: Implementing the Constitution.* While yet another note follows, its focus is on substantive due process in general, and thus does not necessitate discussion in this analysis.

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7. FARBER ET AL., supra note 2, at 626–34.
8. Id. at 634 (citing David Orentlicher, *The Supreme Court and Physician-Assisted Suicide*, 337 NEW ENG. J. OF MED. 1236 (1997)).
9. FARBER ET AL., supra note 2, at 634.
10. Id. at 634–35.
11. Id. at 635 (citing Richard Fallon, *The Supreme Court, 1996 Term—Foreword: Implementing the Constitution*, 111 HARV. L. REV. 54, 145 (1997)).
12. FARBER ET AL., supra note 2, at 635 (discussing *County of Sacramento v. Lewis*, 523 U.S. 833 (1998)).
Stone includes its discussion of euthanasia under the subheading “The Right to Die” within the Implied Fundamental Rights chapter of the book. The topic is introduced with excerpts from *Cruzan v. Director, Missouri Department of Health*, including portions of: the majority opinion, Justice O’Connor’s concurrence, Justice Scalia’s concurrence, Justice Brennan’s dissent, and Justice Stevens’ dissent. The first note following the opinion recognizes that *Cruzan* identifies a liberty interest but does not address whether that interest is a fundamental right, which ultimately leads to a decision that appears “exceedingly narrow.” Another note attempts to draw the relationship between *Cruzan* and other privacy cases, providing an excerpt from Seidman’s *Confusion at the Border: Cruzan, “The Right to Die,” and the Public/Private Distinction*. The last note provides an argument that the state “has no legitimate interest in interfering with the parents’ decision in cases like *Cruzan*.”

The text also contains excerpts from *Washington v. Glucksberg*, including portions of: Parts I and II, Justice O’Connor’s concurrence, as well as Justice Stevens’, Justice Souter’s, Justice Ginsburg’s, and Justice Breyer’s separate concurrences in judgment. One note following this opinion briefly summarizes *Vacco v. Quill* to illustrate the distinction between the prohibited practice of doctor-assisted suicide and the permitted practice of refusing life-saving treatment. Another pair of notes illuminates both the difficulty in determining the precise holding of *Glucksberg* because Justice O’Connor joined the majority yet wrote a separate concurring opinion, as well as the differing views as to the proper treatment of history.

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13. STONE ET AL., supra note 3, at 927.
14. Id. at 927–32.
15. Id. at 932.
17. STONE ET AL., supra note 3, at 933.
18. Id. at 933–40.
19. Id. at 940.
20. Id. at 940.
21. Id. at 941.
This text discusses euthanasia within the "Privacy" section of the Due Process chapter; and more specifically, under the heading, "Substantive Due Process and Rights Over Death." The topic is introduced with several questions and a lengthy summary of *Cruzan v. Director, Missouri Dept. of Health*, including summaries of the majority opinion, Justice O'Connor's concurrence, and Justice Brennan's dissent. Following this summary, the text states that *Cruzan* left open the "question whether there was a liberty right or 'interest' sufficient to invalidate a law with the effect of barring altogether the assistance of a physician in accelerating one's death. It also left open the question of what level of scrutiny might apply to each claim." The text further suggests that *Washington v. Glucksberg* and *Vacco v. Quill* answer these questions.

The *Washington v. Glucksberg* opinion follows, including excerpts from the majority opinion, Justice O'Connor's concurrence, Justice Stevens' concurrence in judgments, Justice Souter's concurrence in judgment, and Justice Breyer's concurrence in judgments. The first note after *Glucksberg* examines "the two competing approaches reflected in *Glucksberg* to discerning privacy rights implicit in substantive due process," by highlighting Chief Justice Rehnquist's narrow positivist approach and Justice Souter's "broader view of privacy as freedom from arbitrary restraint." A second note discusses the right to die and equal protection by summarizing the majority opinion, as well as Justice O'Connor's concurrence, from *Vacco v. Quill*, and stating that in that case "the Court held that New York did not violate the Equal Protection Clause by prohibiting assisted suicide while permitting patients to refuse lifesaving medical treatment." The text also mentions a footnote by Justice Rehnquist, in which he stated that the holding "did not foreclose possible as-applied challenges, but stated that 'a particular plaintiff hoping to show that New York's assisted-suicide ban was

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22. SULLIVAN & GUNTHER, supra note 4, at 484.
23. Id. at 484–86.
24. Id. at 486.
25. Id. (instructing the reader to "distinguish four different situations in which one might seek to accelerate one's death: (1) suicide when one is healthy or only temporarily ill; (2) withdrawal of life support when one is terminally ill; (3) physician-assisted suicide when one is terminally ill; (4) active euthanasia by a physician when one is terminally ill.").
26. Id. at 486–93.
27. Id. at 493.
28. SULLIVAN & GUNTHER, supra note 4, at 493–494.
unconstitutional in his particular case would need to present different and considerably stronger arguments than those advanced by respondents here.” The final note lists a series of challenges, touched upon in the concurring opinions in *Glucksberg* and *Quill*, which seemed to be left open.

**ROTUNDA**

The “Right to Die” issue is embedded within the “Fundamental Rights” section of the “Equal Protection” chapter and is introduced by the edited opinion of *Cruzan v. Director, Missouri Department of Health*. This version contains lengthy excerpts from the majority opinion, a paragraph portion of Justice O’Connor’s concurrence, an excerpt from Justice Scalia’s concurrence, parts of Justice Brennan’s dissent, and a paragraph of Justice Stevens’ dissent. The text only provides one short note after the opinion, concerning the lower court’s further finding that the Cruzan family “had met the clear and convincing evidence standard” and the Court ordered the feeding tube to be removed.

Following the *Cruzan* opinion, the text provides excerpts from *Washington v. Glucksberg* including portions of Parts I and II. The editors inserted a note after the *Glucksberg* opinion explaining that the Court decided *Vacco v. Quill* on the same day as *Glucksberg* and the separate opinions of Justice O’Connor, Justice Stevens, Justice Souter, and Justice Ginsburg for the two cases follow the edited opinion of *Vacco*. The text then provides excerpts from the *Vacco* opinion, followed by portions of: Justice O’Connor’s concurrence, Justice Stevens’ concurrence in judgment, Justice Souter’s concurrence in judgment, Justice Ginsburg’s concurrence

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29. *Id.* at 494.
30. *Id.* at 494–95.
31. **ROTUNDA, supra** note 5, at 922.
32. *Id.* at 922–27.
33. *Id.* at 927.
34. *Id.* at 927–30.
35. *Id.* at 930–31.
36. *Id.* at 931.
37. **ROTUNDA, supra** note 5, at 931.
38. *Id.* at 931–38.
39. *Id.* at 938.
40. *Id.* at 938–41.
41. *Id.* at 941–42.
42. *Id.* at 942.
43. **ROTUNDA, supra** note 5, at 942–43. An editor’s note follows this separate opinion in
in judgment,\textsuperscript{44} and Justice Breyer’s concurrence in judgment.\textsuperscript{45} The text also offers a brief glimpse into the Netherlands’ complete decriminalization of euthanasia and doctor-assisted suicide by providing statistics from governmental reports, \textit{Lancet} British medical journal, the Dutch Pediatric Society, and The Royal Dutch Society for Pharmacology.\textsuperscript{46}

\textbf{VARAT, COHEN, AND AMAR}

Euthanasia is treated within the chapter discussing the Due Process Clause, and more specifically, “Personal Autonomy” within the “Protection of Personal Liberties.”\textsuperscript{47} While the only case included in this section is \textit{Washington v. Glucksberg}, the excerpted version is notably long, including portions of: Part I and II of the majority opinion, Justice O’Connor’s concurrence, Justice Stevens’ concurrence in judgment, Justice Souter’s concurrence in judgment, and Justice Breyer’s concurrence in judgments.\textsuperscript{48} The text also includes a lengthy footnote, providing a summary of the \textit{Vacco v. Quill} decision.\textsuperscript{49} There are no further notes or citations to journal articles exploring this topic.

\section*{ABORTION}

\textbf{FARBER, ESKRIDGE, JR., AND FRICKEY}

The first instance the abortion issue is mentioned within Farber is in the text’s first chapter entitled “A Prologue on Constitutional History.”\textsuperscript{50} Noting that the Court “expanded the right to privacy to assure women the right to abortion,” the text gives background facts to \textit{Roe v. Wade} and states that \textit{Griswold} “served as the constitutional basis for a vigorous women’s ‘pro-choice’ movement in the 1960’s.”\textsuperscript{51} The text then summarizes \textit{Roe}, as well as the criticism that the Court “was not enforcing any kind of text in the

which Justice Souter explains his reasoning concerning \textit{Glucksberg}.

\textsuperscript{44} ROTUNDA, \textit{supra} note 5, at 943.
\textsuperscript{45} \textit{Id}.
\textsuperscript{46} \textit{Id} (citing Richard Minter, \textit{The Dutch Way of Death}, \textit{WALL STREET JOURNAL}, April 25, 2001, at A20).
\textsuperscript{47} VARAT ET AL., \textit{supra} note 6, at 408.
\textsuperscript{48} \textit{Id} at 463–76.
\textsuperscript{49} \textit{Id} at 467.
\textsuperscript{50} FARBER ET AL., \textit{supra} note 2, at 50.
\textsuperscript{51} \textit{Id}.
abortion cases [following Roe].” The text finishes its brief introduction to the topic by illustrating that, despite predictions of Roe’s demise, it was reaffirmed (and reinterpreted) in Planned Parenthood v. Casey.

Most of the abortion discussion is within the section entitled “Protecting Fundamental Rights.” The text begins with Roe v. Wade, edited to include approximately four pages of excerpts from the majority opinion, and approximately one page of excerpts from Justice Rehnquist’s dissent. The text then includes a summary of Doe v. Bolton, along with a question as to whether the age of the statute made a difference in the Court’s decision. The text also provides a summary of the legislative history surrounding abortion and questions whether the Court acted too soon and instead should have left the progression of abortion to the legislature, as with contraception. The text asks two further questions concerning the Roe decision: whether a more limited and more aggressive rational basis review would have sufficed; and whether Roe is “just Lochner in feminist garb” or if there is a principled reason for viewing abortion as a fundamental right. The text then discusses Chief Justice Burger’s emphasis that the independent medical judgment of the physician is a “crucial element in the abortion decision” as well as the reality that abortion clinics appear to undercut Roe’s expectation of “direct patient-physician dialogue” that may serve as a barrier to on-demand abortions. The last note included in this section is a summary of Mary Ann Glendon’s findings in Abortion and Divorce in Western Law.

After these shorter notes, the text includes longer excerpts from Reasoning from the Body: A Historical Perspective on Abortion Regulation and Questions of Equal Protection by Reva Siegel; Some Thoughts on Autonomy and Equality in Relation to Roe v.

52. Id.
53. Id. at 50–51
54. Id. at 570.
55. Id. at 570–74.
56. FARBER ET AL., supra note 2, at 575.
57. Id.
58. Id. at 575–76.
59. Id. at 576.
60. Id. at 576.
61. Id. (citing MARY ANN GLENDON, ABORTION AND DIVORCE IN WESTERN LAW (1987)).
Wade by Ruth Bader Ginsburg; and A Defense of Abortion by Judith Jarvis Thomson. The text then discusses several decisions between Roe and Casey, in which the abortion right further developed. The text provides summaries of Planned Parenthood v. Danforth; Bellotti v. Baird; Planned Parenthood v. Ashcroft; H.L. v. Matheson; Akron v. Akron Center for Reproductive Health; Thornburgh v. American College of Obstetricians and Gynecologists; Colautti v. Franklin; Maher v. Roe; Harris v. McRae; Webster v. Reproductive Health Services; and Hodgson v. Minnesota.

An edited opinion of Casey follows, including portions of Parts I, II III, IV and VI, a summary of Part V, a summary of Chief Justice Rehnquist’s concurrence in part and dissent in part, and excerpts from Justice Scalia’s concurrence in judgment in part and dissent in part. After the edited Casey opinion, the text discusses spousal notification, waiting periods, parental consent with judicial bypass, and the fetus as a person. Another note highlights the contrast between the authors of Casey’s joint opinion. Following these notes, the text provides a summary of the Stenberg v. Carhart decision as an introduction to the edited version of Gonzales v. Carhart that follows and serves as a conclusion to the discussion of abortion in this chapter.

63. FARBER ET AL., supra note 2, at 578 (citing Ruth Bader Ginsburg, Some Thoughts on Autonomy and Equality in Relation to Roe v. Wade, 63 N.C. L. REV. 375, 382–83 (1985)).
64. FARBER ET AL., supra note 2, 578. (citing Judith Jarvis Thomson, A Defense of Abortion, 1 PHIL. & PUB. AFF. 47 (1971)).
65. FARBER ET AL., supra note 2, at 579–82.
66. Id. at 579.
67. Id.
68. Id.
69. Id.
70. Id. at 579–80.
71. FARBER ET AL., supra note 2, at 580.
72. Id.
73. Id.
74. Id.
75. Id. at 580–81.
76. Id. at 581.
77. FARBER ET AL., supra note 2, at 582–93.
78. Id. at 593–95.
79. Id. at 595.
80. Id.
81. Id. at 595–96.
82. Id. at 596–97.
83. FARBER ET AL., supra note 2, at 597–98.
84. Id. at 598–607 (including portions of I, III-B, III-C, IV-A, IV-B and V of the majority
After this main discussion of abortion, however, the text once again addresses the topic in the First Amendment chapter. Within this chapter, the text includes summaries of the majority opinion, Justice Souter’s concurrence, Justice Scalia’s dissent, and Justice Kennedy’s dissent from the *Hill v. Colorado* opinion. The text also provides an edited version of *Rust v. Sullivan*, including portions of the majority opinion and Justice Blackmun’s dissent. Lastly, this chapter contains a summary of *Madsen v. Women’s Health Center, Inc.*, including both a summary of the majority opinion and Justice Scalia’s dissent.

STONE, SEIDMAN, SUNSTEIN, TUSHNET, AND KARLAN

Although much of the abortion discussion in this book is included in the chapter entitled Implied Fundamental Rights, the text addresses the topic in several other sections throughout the book. One chapter that also discusses abortion is the Freedom of Expression chapter. Within this chapter, the text includes a summary of *Bigelow v. Virginia*, in which the Court “reversed the conviction of an individual who . . . published in his newspaper an advertisement announcing the availability of legal abortions in New York” because “[i]t contained factual material of clear ‘public interest.’” The text also provides summaries and excerpts from *Madsen v. Women’s Health Center, Inc.*, *Frisby v. Schultz*, *Schenck v. Pro-Choice Network of Western New York*, and *Hill v. Colorado*. Additionally, a portion of the *Rust v. Sullivan* opinion appears in this chapter. Many of the notes following this edited opinion focus on Freedom of Expression issues rather than abortion issues. Lastly, Stone includes
a summary of Planned Parenthood v. American Coalition of Life Activists, providing portions of the majority opinion and the dissenting opinion, as an example of a case addressing expressing a political point of view.\textsuperscript{98}

Another chapter that addresses abortion is The Constitution and Religion.\textsuperscript{99} Within this chapter, Harris v. McRae is summarized as the Court rejecting “an establishment clause attack on a statute restricting public financing of abortions.”\textsuperscript{100} The text also summarizes Bowen v. Kendrick, in which the Court held that the Adolescent Family Life Act did not violate the establishment clause.\textsuperscript{101} Protecting Religious Liberty: The False Messiahs of Free Speech Doctrine and Formal Neutrality by Bowen is included in this chapter as well, and though not specifically about abortion, the text provides an example centered around an informed-consent requirement for abortion to illustrate the differing standards applied when women seek an abortion for secular reasons, compared to women who seek abortions for religious reasons.\textsuperscript{102}

Yet another chapter that includes a discussion of abortion is State Action, Baselines, and the Problem of Private Power.\textsuperscript{103} Within this chapter there are lengthy summaries of Rust v. Sullivan\textsuperscript{104} and Maher v. Roe\textsuperscript{105} to illustrate unconstitutional conditions on government benefits.\textsuperscript{106} The Role of the Supreme Court in the Constitutional Order chapter also touches on abortion.\textsuperscript{107} This chapter mentions that a constitutional amendment addressing abortion has been offered unsuccessfully,\textsuperscript{108} that Reagan’s Supreme Court appointees, on issues of individual autonomy, including abortion, have been divided,\textsuperscript{109} that there have been proposals to prevent the Supreme Court from hearing cases involving abortion,\textsuperscript{110} and that, in one view, branches of government other than courts act properly

\textsuperscript{98.} Id. at 1074–76.
\textsuperscript{99.} Id. at 1443–1539 (Chapter VIII).
\textsuperscript{100.} Id. at 1488.
\textsuperscript{101.} STONE ET AL., supra note 3, at 1506.
\textsuperscript{102.} Id. at 1522–23 (citing Brownstein, Protecting Religious Liberty: The False Messiahs of Free Speech Doctrine and Formal Neutrality, 18 J.L. & POL. 119, 191–92 (2002)).
\textsuperscript{103.} STONE ET AL., supra note 3, at 1543–1608 (Chapter IX).
\textsuperscript{104.} Id. at 1599–1600.
\textsuperscript{105.} Id. at 1600–01.
\textsuperscript{106.} Id. at 1598.
\textsuperscript{107.} Id. at 1–162 (Chapter I).
\textsuperscript{108.} Id. at 80.
\textsuperscript{109.} STONE ET AL., supra note 3, at 81.
\textsuperscript{110.} Id. at 86.
when they interpret the Constitution more expansively than does the Court and then perhaps “political branches are within their rights if they conclude (for example) that . . . government must fund abortions—even if the Supreme Court disagrees.”

The final chapter that examines the abortion issue apart from the main treatment of the topic is Equality and the Constitution. In this chapter, the text includes an excerpt from Rethinking Sex and the Constitution, a note discussing “de facto” wealth classifications, stating that “[t]he primary context in which equal protection claims involving wealth have arisen involve . . . claims that the government has wrongly failed to subsidize some activity that can be engaged in only if one has the money to purchase it in private markets (for example, the failure to subsidize abortions when the government subsidizes other medical care under Medicaid),” a statement that “[p]owerful arguments have been advanced that our preference for the born over fetuses, or for people over animals represents no more than chauvinism,” and a short summary of Harris v. McRae in connection with affirmative rights under the Equal Protection Clause of the Constitution.

As previously mentioned, the majority of the abortion discussion occurs within the Implied Fundamental Rights chapter. In the introduction of the chapter, the text includes a statement that “[o]thers have criticized the Court for creating a right to abortion without clear textual foundation in Roe v. Wade . . . [.]” Stone then begins the discussion of abortion, like many other textbooks, with the Roe v. Wade opinion. The text includes approximately four pages of excerpts from the majority opinion, as well as portions of: Justice Stewart’s concurrence, Justice Douglas’ concurrence, Justice White’s dissent with whom Justice Rehnquist joins, and Justice Rehnquist’s dissent.

111. Id. at 61.
112. Id. at Chapter V.
114. STONE ET AL., supra note 3, at 698.
115. Id. at 687 (signaling to J. NOONAN, THE MORALITY OF ABORTION: LEGAL AND HISTORICAL PERSPECTIVES 51–58 (1970); and T. REGAN & P. SINGER, ANIMAL RIGHTS AND HUMAN OBLIGATIONS (1976)).
116. STONE ET AL., supra note 3, at 703.
117. See id. at 711.
118. Id.
119. Id. at 843.
120. Id. at 843–49.
Three notes following the case discuss the precedent leading to Roe and the rights to privacy and reproductive autonomy established in Roe, including excerpts from The Wages of Crying Wolf: A Comment on Roe v. Wade as a criticism of the opinion and excerpts from The Forest and the Trees: Roe v. Wade and Its Critics in support of the opinion. One note also brings up issues relating to artificial insemination and potential genetic parenthood. Another note discusses the issue of abortion and sex discrimination, providing excerpts from several articles including: Karst's Book Review, Tribe's Constitutional Choices, Regan's Rewriting Roe v. Wade, Ely's The Wages of Crying Wolf A Comment on Roe v. Wade, MacKinnon's Roe v. Wade: A Study in Male Ideology, as well as a string cite to other articles that consider abortion and sex discrimination. Yet another note discusses the issue of compelling state interests, providing excerpts from Epstein's Substantive Due Process by Any Other Name: The Abortion Cases; Tribe's Foreword: Toward a Model of Roles in the Due Process of Life and Law; and Tribe's American Constitutional Law.

121. Id. at 849–50.
122. STONE ET AL., supra note 3, at 849–51.
123. Id. at 849, 850 (citing Ely, The Wages of Crying Wolf: A Comment on Roe v. Wade, 82 YALE L.J. 920, 930, 935–36, 947 (1973)).
125. STONE ET AL., supra note 3, at 851 (including several hypothetical questions and citing Cohen, The Constitution and the Rights Not to Procreate, 60 STAN. L. REV. 1135 (2008)).
126. STONE ET AL., supra note 3, at 851–52.
127. Id. at 851 (citing Karst, Book Review, 89 HARV. L. REV. 1028, 1036–37 (1976)).
128. STONE ET AL., supra note 3, at 851. (citing L. TRIBE, CONSTITUTIONAL CHOICES 243 (1985)).
129. STONE ET AL., supra note 3, at 851. (citing Regan, Rewriting Roe v. Wade, 77 MICH. L. REV. 1569 (1979)).
132. STONE ET AL., supra note 3, at 852.
133. Id. at 852–53.
134. Id. at 853 (citing Epstein, Substantive Due Process by Any Other Name: The Abortion Cases, 1973 SUP. CT. REV. 159, 172, 176, 182).
135. STONE ET AL., supra note 3, at 853 (citing L. Tribe, Foreword: Toward a Model of Roles in the Due Process of Life and Law, 87 HARV. L. REV. 1, 11, 15, 22 (1973)).
136. STONE ET AL., supra note 3 at 853 (citing L. TRIBE, AMERICAN CONSTITUTIONAL LAW 1350 (2d ed. 1988) and L. TRIBE, ABORTION: A CONFLICT OF ABSOLUTES (1990)).
Two other notes examine the controversy surrounding the issue of the fetus as a person.\textsuperscript{137} One view summarized by the text states that if the fetus is a person, or if the interest in protecting it is compelling, \textit{Roe} is necessarily wrong.\textsuperscript{138} For support of this view, the text provides another excerpt from Tribe's \textit{American Constitutional Law}.\textsuperscript{139} Another view summarized in the text contends that the contestable claims surrounding abortion should play absolutely no role in constitutional law.\textsuperscript{140} Following this assertion, the text provides an excerpt from Thomson's \textit{A Defense of Abortion}.\textsuperscript{141} In a similar vein, the text offers a discussion of the viability issue, including an exploration of the points that "viability is not biologically fixed" and "[t]he point of viability varies from fetus to fetus."\textsuperscript{142}

The final note states that "\textit{Roe} has been subject to strong attacks from a wide variety of quarters" and the post-\textit{Roe} cases that follow should be considered in the context of sustained political campaigns designed on the one hand to end, and on the other hand to preserve, the abortion right.\textsuperscript{143} The casebook then summarizes the opinions of \textit{Maher v. Roe}\textsuperscript{144} and \textit{Harris v. McRae},\textsuperscript{145} including excerpts from the majority and dissenting opinions, as well as further notes regarding abortion funding.\textsuperscript{146} Within this series of notes, the text offers excerpts from three articles to illustrate the differing reactions to the abortion-funding cases, including portions from Perry's \textit{Why the Supreme Court Was Plainly Wrong in the Hyde Amendment Case: A Brief Comment on Harris v. McRae};\textsuperscript{147} Westen's \textit{Correspondence};\textsuperscript{148} and Tribe's \textit{Constitutional Choices}.\textsuperscript{149} The text

\begin{thebibliography}{99}
\bibitem{137} Stone et al., \textit{supra} note 3, at 853–55.
\bibitem{138} Id. at 853.
\bibitem{139} Id. at 853–54 (citing L. Tribe, \textit{American Constitutional Law} 931 (1978)).
\bibitem{140} Stone et al., \textit{supra} note 3, at 854.
\bibitem{141} Id. at 854–55 (citing Thomson, \textit{A Defense of Abortion}, 1 PHIL. & PUB. AFF. 47, 48–49, 55–59 (1971)).
\bibitem{143} Stone et al., \textit{supra} note 3, at 855.
\bibitem{144} Id. at 855–58.
\bibitem{145} Id. at 858–59.
\bibitem{146} Id. at 859–60.
\bibitem{147} Id. at 859 (citing Perry, \textit{Why the Supreme Court Was Plainly Wrong in the Hyde Amendment Case: A Brief Comment on Harris v. McRae}, 32 STAN. L. REV. 1113, 1115–16, 1125 (1980)).
\bibitem{148} Stone et al., \textit{supra} note 3, at 859 (citing Westen, \textit{Correspondence}, 33 STAN. L. REV. 1187 (1981)).
\end{thebibliography}
also mentions a potential relationship between these cases and the unconstitutional conditions doctrine.\footnote{150. \cite{StoneEtAl, supra note 3, at 859–60 (citing L. Tribe, Constitutional Choices, 243–44 (1985)).} Lastly, this series of notes provides a short, introductory summary of \textit{Rust v. Sullivan} to illustrate how the \textit{Harris} and \textit{Ma her} precedent was expanded.\footnote{151. \cite{StoneEtAl, supra note 3, at 860 (signaling to Sullivan, Unconstitutional Conditions, 102 Harv. L. Rev. 1413 (1989)).}

Following this set of notes the text offers a survey of cases exemplifying “Abortion Regulation between \textit{Roe} and \textit{Casey}.”\footnote{152. \cite{StoneEtAl, supra note 3, at 860}.} Stone includes summaries of the following cases: \textit{City of Akron v. Akron Center for Reproductive Health, Inc.},\footnote{153. \cite{StoneEtAl, supra note 3, at 860–61, 863}.} \textit{Planned Parenthood of Central Missouri v. Danforth},\footnote{154. \cite{StoneEtAl, supra note 3, at 861}.} \textit{Thornburgh v. American College of Obstetricians and Gynecologists},\footnote{155. \cite{StoneEtAl, supra note 3, at 861}.} \textit{Colautti v. Franklin},\footnote{156. \cite{StoneEtAl, supra note 3, at 861}.} \textit{Planned Parenthood Ass’n of Kansas City v. Danforth},\footnote{157. \cite{StoneEtAl, supra note 3, at 861}.} \textit{Planned Parenthood Ass’n v. Ashcroft},\footnote{158. \cite{StoneEtAl, supra note 3, at 862–63}.} \textit{H.L. v. Matheson},\footnote{159. \cite{StoneEtAl, supra note 3, at 863}.} \textit{Bellotti v. Baird},\footnote{160. \cite{StoneEtAl, supra note 3, at 864–82}.} \textit{Webster v. Reproductive Health Services},\footnote{161. \cite{StoneEtAl, supra note 3, at 882–83}.} and \textit{Hodgson v. Minnesota}.\footnote{162. \cite{StoneEtAl, supra note 3, at 882}.}

Stone then includes a lengthy excerpt of \textit{Casey}, providing portions of: Parts I–VI, Justice Blackmun’s concurrence in part, concurrence in judgment in part, and dissent in part, Justice Stevens’ concurrence in part and dissent in part, Chief Justice Rehnquist’s concurrence in judgment in part and dissent in part, and Justice Scalia’s concurrence in judgment in part and dissent in part.\footnote{163. \cite{StoneEtAl, supra note 3, at 864–82}.} After the \textit{Casey} decision, the text uses several notes to explore the role of the Court.\footnote{164. \cite{StoneEtAl, supra note 3, at 882–83}.} The notes include an inference that the judges act independently of politics,\footnote{165. \cite{StoneEtAl, supra note 3, at 882}.} as well as a brief discussion of stare decisis in constitutional history.\footnote{166. \cite{StoneEtAl, supra note 3, at 882}.} The issue of gender equality in relationship to abortion also surfaces again in these notes, including
Strauss’ argument that *Casey*, for the first time, suggests that these issues be central to the abortion debate.\textsuperscript{167} Within this same note, the text briefly touches upon Dworkin’s contention regarding the “essentially religious’ nature of the key question, which is the sanctity of human life.”\textsuperscript{168} A last note following the *Casey* decision questions the value that has been placed on the *Roe* decision and the abortion issue in America.\textsuperscript{169}

An edited version of *Gonzales v. Carhart* follows, including portions of Parts I–V, Justice Thomas’ concurrence, and Justice Ginsburg’s dissent.\textsuperscript{170} The text concludes its discussion of abortion with a section entitled “The Future of Abortion Rights.”\textsuperscript{171} Within this section, the text offers possible governmental interests advanced by the Partial Birth Abortion Act, and cites Siegel’s *The New Politics of Abortion: An Equality Analysis of Woman-Protective Abortion Restrictions*,\textsuperscript{172} a statement from Justice Ginsburg implying that the Partial-Birth Abortion Ban Act unduly burdens the right to an abortion,\textsuperscript{173} considerations for facial and as-applied challenges, stating that the “Court leaves open the possibility that individual women can challenge the statute as applied to them on the ground that a standard D & E would risk their health,”\textsuperscript{174} and a last note provides three main possibilities for evaluating the “long-term” winners and losers in the *Gonzales v. Carhart* decision.\textsuperscript{175}

**SULLIVAN AND GUNTHER**

The abortion issue in *Constitutional Law* is introduced in the last note following the text’s edited version of *Griswold v. Connecticut*.\textsuperscript{176} The note explains that the decisions of *Griswold, Eisenstadt*, and *Casey* “were limited on their facts to the prevention of pregnancy through the use of contraception.”\textsuperscript{177} The note then introduces *Roe v. Wade* as the question of if the privacy calculus in


\textsuperscript{168} Stone et al., *supra* note 3, at 883 (citing R. Dworkin, Life’s Dominion (1993)).

\textsuperscript{169} Stone et al., *supra* note 3, at 883.

\textsuperscript{170} *Id.* at 883–97.

\textsuperscript{171} *Id.* at 897–98.


\textsuperscript{173} Stone et al., *supra* note 3, at 898.

\textsuperscript{174} *Id.*

\textsuperscript{175} *Id.*

\textsuperscript{176} Sullivan & Gunther, *supra* note 4, at 437.

\textsuperscript{177} *Id.*
reproductive decision making is altered once a pregnancy has begun. The text then includes excerpts of the majority opinion in *Roe*, totaling approximately two-and-one-half pages, as well as short paragraph excerpts of Justice Stewart’s concurrence, Justice White’s dissent, and Justice Rehnquist’s dissent.

Following the edited version of *Roe*, Sullivan includes several notes further illuminating other issues and jurisprudence surrounding the abortion issue. The first note examines the privacy interest that *Roe* protects. Stating that the Fourteenth Amendment’s right to privacy differs from *Griswold*’s Ninth Amendment or penumbras approaches, the note then provokes inquiries into the breadth of this privacy interest and cites *A Defense of Abortion* for the foundation that there may be a “presumptive right of decisional autonomy over the use of one’s body for the life support of others even assuming that a countervailing life is at stake[].” Next, the text examines the balance of competing government interests, stating that the “Court finds that the woman’s prima facie right to end her pregnancy can be defeated only by ‘compelling’ state interests.” The note then explores the two main governmental interests, which are to protect the life of the mother and to protect the potential life of the fetus, and the differing measuring standards depending on which trimester the pregnancy is in. The note continues by stating that there is no consensus as to when life begins and suggests comparing *Abortion: the Clash of Absolutes* by Tribe, with *How Not to Promote Serious Deliberation About Abortion* by McConnell, for contrasting views as to whether the Court should defer or invalidate a state’s judgment regarding abortion laws.

Another note includes one piece of criticism and one piece of support for *Roe*. One argument stems from *The Wages of Crying Wolf: A Comment on Roe v. Wade*, stating that “Roe is even less

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178. *Id.* at 437–38.
179. *Id.* at 438–41.
180. *Id.* at 441–48.
181. *Id.* at 441.
183. SULLIVAN & GUNTHER, *supra* note 4, at 441.
184. *Id.* at 441–42.
185. *Id.* (citing TRIBE, *ABORTION: THE CLASH OF ABSOLUTES* (1990)).
187. SULLIVAN & GUNTHER, *supra* note 4, at 442.
188. *Id.*.
defensible than *Lochner* because, rather than resting on the illegitimacy of the ends sought or the lack of a ‘plausible argument’ that the legislative means further permissible ends, *Roe* simply announces that the ‘goal is not important enough to sustain the restriction.’”  

The piece of support from Tribe’s *Foreword: Toward a Model of Roles in the Due Process of Life and Law* suggests that the Court determined that “some types of choices ought to be remanded, on principle, to private decision-makers unchecked by substantive governmental control.”  

The text also includes a note on “*Roe* and Sex Equality,” providing a string citation of journal articles that suggest that abortion law “implicates equality concerns,” as well as “sociological evidence that attitudes to abortion correlate closely with attitudes toward gender roles.”  

Yet another note discusses the political reaction to *Roe*, mentioning both attempts at constitutional amendments and legislative initiatives.

The text also includes a long note discussing several regulations surrounding abortion law and the related cases that upheld or overturned these regulations. The note first discusses “regulations of medical procedures” and includes paragraph summaries of both *Doe v. Bolton* and *Akron v. Akron Center for Reproductive Health*. The note next provides a short discussion of “spousal and parental consent requirements,” briefly summarizing the decisions of *Planned Parenthood of Central Missouri v. Danforth*, *Bellotti v. Baird* (*Bellotti I* and *Bellotti II*), *Planned Parenthood Ass’n of Kansas City v. Ashcroft*, *H.L. v. Matheson*, *Hodgson v. H.L.*

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189. *Id.* (citing Ely, *The Wages of Crying Wolf: A Comment on Roe v. Wade*, 82 *Yale L.J.* 920 (1973)).  
192. SULLIVAN & GUNTHER, supra note 4, at 443.  
193. *Id.* at 443–48.  
194. *Id.* at 443.  
195. *Id.* at 443–44.  
196. *Id.* at 444.  
197. *Id.*  
198. SULLIVAN & GUNTHER, supra note 4, at 444.
Minnesota, and Ohio v. Akron Ctr. for Reproductive Health. The note also offers a short examination of “waiting period and reporting requirements” by summarizing another portion of Akron v. Akron Center for Reproductive Health as well as the holding of Thornburgh v. American College of Obstetricians and Gynecologists. Lastly, the text briefly analyzes “abortion funding restrictions.” This final section offers lengthier summaries of Maher v. Roe, including excerpts from the majority opinion, Justice Brennan’s dissent, and Justice Marshall’s dissent; Harris v. McRae, with portions of the majority opinion, Justice Brennan’s dissent, and Justice Stevens’ dissent; Rust v. Sullivan, including excerpts from the majority opinion, as well as Justice Blackmun’s dissent; and Webster v. Reproductive Health Services.

The last note following the excerpted decision of Roe describes how Justices Rehnquist, White, Scalia, and Thomas expressed a view that the case was wrongly decided and Justice O’Connor expressed doubt about elaborations of the decision. The note concludes with a quote from Abortion Politics: Writing for an Audience of One by Estrich and Sullivan that establishes the premise that Justice O’Connor would not overrule Roe.

The text next provides an edited version of Casey. This excerpt contains portions of: Parts I–IV, V-B-E, VI, Justice Stevens’ concurrence in part and dissent in part, Justice Blackmun’s concurrence in part, concurrence in judgment in part, and dissent in part, Chief Justice Rehnquist’s concurrence in judgment in part and dissent in part, and Justice Scalia’s concurrence in judgment in part and dissent in part.

199. Id.
200. Id.
201. Id.
202. Id.
203. Id. at 444–45.
204. SULLIVAN & GUNTHER, supra note 4, at 445–46.
205. Id. at 446–47.
206. Id. at 447.
207. Id.
209. SULLIVAN & GUNTHER, supra note 4, at 448–57.
210. Id. at 448–54.
211. Id. at 454.
212. Id. at 454–55.
213. Id. at 455–56.
214. Id. at 456–57.
The notes following this decision briefly touch on a number of issues arising from the opinion and the development of abortion law more generally.\textsuperscript{215} The first note discusses \textit{Casey}'s unexpected emphasis on stare decisis, citing \textit{Constitutional Doctrine} for the proposition that "paradoxically [the authors of the joint opinion in \textit{Casey}] seem to give [continuity and stability] undue prominence relative to their conviction of the rightness of the actual [\textit{Roe}] decision—almost as if the decision could not stand on its own and needed an apology."\textsuperscript{216} A second note purports that "all of the prevailing opinions in \textit{Casey} refer to the relationship between the abortion right and gender equality" and cites \textit{Abortion, Toleration, and Moral Uncertainty} for the premise that \textit{Casey}, for the first time, addressed one of the central issues in abortion, namely "the effect of abortion laws on the status of women."\textsuperscript{217} The next note examines the undue burden standard, as both a facial and as-applied challenge.\textsuperscript{218} Within this note, the text includes a summary of the majority's opinion in \textit{Ayotte v. Planned Parenthood of Northern New England}.\textsuperscript{219} The final note discusses the issue of partial birth abortion.\textsuperscript{220} The note includes summaries of the separate opinions from \textit{Stenberg v. Carhart}.\textsuperscript{221} The note also mentions that several years later, "the Court came to the opposite conclusion with respect to the constitutionality of a federal ban on late-term abortions entitled the Partial-Birth Abortion Ban Act of 2003."\textsuperscript{222} This statement serves as an introduction to the edited opinion of \textit{Gonzales v. Carhart}, including excerpts from the majority opinion, Justice Thomas' concurrence, and Justice Ginsburg's dissent.\textsuperscript{223}

\textbf{ROTUNDA}

Rotunda addresses the majority of the abortion discussion within the section of the textbook entitled "Fundamental Rights," falling within the Equal Protection chapter.\textsuperscript{224} Like many of the other

\begin{footnotes}
\footnotetext{215}{\textsc{Sullivan} \& \textsc{Guntcher}, supra note 4, at 457–59.}
\footnotetext{216}{\textit{Id.} at 457 (citing Fried, \textit{Constitutional Doctrine}, 107 Harv. L. Rev. 1140 (1994)).}
\footnotetext{217}{\textsc{Sullivan} \& \textsc{Guntcher}, supra note 4, at 457 (citing Strauss, \textit{Abortion, Toleration, and Moral Uncertainty}, 1993 Sup. Ct. Rev. 1).}
\footnotetext{218}{\textsc{Sullivan} \& \textsc{Guntcher}, supra note 4, at 457–58.}
\footnotetext{219}{\textit{Id.}}
\footnotetext{220}{\textit{Id.} at 458–59.}
\footnotetext{221}{\textit{Id.}}
\footnotetext{222}{\textit{Id.} at 459.}
\footnotetext{223}{\textit{Id.} at 459–62.}
\footnotetext{224}{\textsc{Rotunda}, supra note 5, at 864.}
\end{footnotes}
texts surveyed, Rotunda introduces the issue with excerpts from \textit{Roe v. Wade}, offering parts of the majority opinion and paragraph summaries of any excluded portions.\footnote{225} The text also includes a small excerpt from the Chief Justice Burger’s concurrence, Justice Rehnquist’s dissent, and Justice White’s dissent, and notes that the concurring opinions of Justice Douglas and Justice Stewart are omitted.\footnote{226}

Following the \textit{Roe} opinion, Rotunda provides several notes summarizing other abortion jurisprudence, discussing each case in one or two paragraphs.\footnote{227} These cases include \textit{Doe v. Bolton},\footnote{228} \textit{Connecticut v. Menillo},\footnote{229} \textit{Colautti v. Franklin},\footnote{230} \textit{Planned Parenthood of Central Missouri v. Danforth},\footnote{231} \textit{Ohio v. Akron Center for Reproductive Health},\footnote{232} \textit{Akron v. Akron Center for Reproductive Health, Inc.},\footnote{233} \textit{Thornburgh v. American College of Obstetricians and Gynecologists},\footnote{234} \textit{Maher v. Roe},\footnote{235} \textit{Harris v. McRae},\footnote{236} \textit{Webster v. Reproductive Health Services},\footnote{237} and \textit{Rust v. Sullivan}.\footnote{238}

The next excerpted opinion provided at length is \textit{Casey}.\footnote{239} The edited version is introduced with a paragraph explaining the breakdown of justice votes on each portion of the opinion\footnote{240} and then includes portions of: Parts I–IV, \textit{V-A-E},\footnote{241} Justice Stevens’ concurrence in part and dissent in part,\footnote{242} Justice Blackmun’s

\begin{footnotes}
\item[225.] \textit{Id.} at 864–71.
\item[226.] \textit{Id.} at 870–71.
\item[227.] \textit{Id.} at 871–76.
\item[228.] \textit{Id.} at 871–72.
\item[229.] \textit{Id.} at 872.
\item[230.] \\textit{ROTUNDA, supra} note 5, at 872.
\item[231.] \textit{Id.} at 872, 873 (noting the presence of a divided court and Justice White’s dissent).
\item[232.] \\textit{ROTUNDA, supra} note 5, at 873 (providing a summary of Justice Kennedy’s plurality opinion and Justice Blackmun’s dissent).
\item[233.] \\textit{ROTUNDA, supra} note 5, at 873–74 (including an excerpt from Justice O’Connor’s dissent).
\item[234.] \\textit{ROTUNDA, supra} note 5, at 874 (providing a summary of Chief Justice Burger’s dissent and Justice O’Connor’s dissent).
\item[235.] \\textit{ROTUNDA, supra} note 5, at 874–75 (noting that Justices Brennan, Blackmun, and Marshall filed dissents).
\item[236.] \\textit{ROTUNDA, supra} note 5, at 875 (providing a summary of Justice Brennan’s dissent and noting that Justices Marshall, Stevens, and Blackmun filed dissents).
\item[237.] \\textit{ROTUNDA, supra} note 5, at 875 (noting that the Court was fragmented and providing a summary of Justice Stevens’ concurrence in part and dissent in part).
\item[238.] \\textit{ROTUNDA, supra} note 5, at 875–76 (providing a summary of Justice Blackmun’s dissent, Justice Stevens’ dissent, and Justice O’Connor’s dissent).
\item[239.] \\textit{ROTUNDA, supra} note 5, at 876.
\item[240.] \textit{Id.}
\item[241.] \textit{Id.} at 876–87.
\item[242.] \textit{Id.} at 887.
\end{footnotes}
Chief Justice Rehnquist’s concurrence in judgment in part and dissent in part,243 Justice Scalia’s concurrence in judgment in part and dissent in part,244 and Justice Scalia’s concurrence in judgment in part and dissent in part.245 The first note following the edited opinion provides a summary of Ayotte v. Planned Parenthood of Northern New England, noting that the decision was unanimous.246 Another note provides information about state courts allowing non-viable fetuses to bring wrongful death actions and includes a statement from Kathryn Kolbert247 saying “Recognition of the nonviable fetus as an individual person is a back-door way to undermine the rights guaranteed,” and another statement from Charlotte Snead248 explaining that the women-plaintiffs “were robbed of their choice . . . Except for a wreck or an injury there would’ve been a normal child.”249 The last note contains a lengthy summary of the Stenberg v. Carhart decision.250 Following this discussion, the text provides a brief statement from columnist George Will of the Washington Post that offers a hypothetical situation in which categorizing a partial-birth abortion as a “choice” seems more difficult.251

Apart from this main treatment of abortion, there are a number of other portions scattered throughout the textbook, touching on abortion-related issues. One note summarizes the decision of Bigelow v. Virginia, which held that Virginia could not punish a newspaper publisher for printing an advertisement paid for by an abortion referral agency.252 Another note again summarizes the Harris v. McRae decision, focusing on the Hyde Amendment, and quoting the majority’s statement that “the Hyde Amendment . . . is as much a reflection of ‘traditionalist’ values towards abortion as it is an embodiment of the views of a particular religion.”253

243. Id.
244. Id. at 887–91.
245. ROTUNDA, supra note 5, at 891–95.
246. Id. at 896 (summarizing Ayotte v. Planned Parenthood of Northern New England, 126 U.S. 961 (2006)).
247. ROTUNDA, supra note 5, at 896. Kathryn Kolbert is affiliated with the Center for Reproductive Law and Policy, which advocates abortion rights.
248. Id. Charlotte Snead is affiliated with West Virginians for Life.
249. Id. (citing Frances A. McMorris, Courts are Giving New Rights to Fetuses, WALL ST. J., Sept. 4, 1996, at B1, col. 4, 5 & B2 at col. 4).
250. ROTUNDA, supra note 5, at 896–99.
251. Id. at 899 (George Will, Editorial, WASH. POST, June 29, 2000 at A31).
252. ROTUNDA, supra note 5, at 1173.
253. Id. at 1447.
Lastly, the text also includes excerpts of *Madsen v. Women's Health Center, Inc.* in the "Injunctions and Public Forum" section of the "Freedom of Speech" chapter. The text includes portions of Parts I–III of this opinion and Justice Scalia’s concurrence in judgment in part and dissent in part, and a paragraph of Justice Stevens’ concurrence in part and dissent in part. The text then includes lengthy summary of *Schenck v. Pro-Choice Network of Western New York,* as well as a summary of *Hill v. Colorado.* Rotunda follows this edited opinion with two hypothetical situations, which focus more on free speech claims than abortion.

VARAT, COHEN, AND AMAR

The majority of the discussion surrounding abortion lies within a section of the Due Process Clause chapter of the textbook entitled "Protection of Personal Liberties." More specifically, the issue of abortion is contained under the heading "Personal Autonomy." The text introduces the topic with a short paragraph summary of the *Eisenstadt v. Baird* decision, concluding with this statement from the Court: "if the right of privacy means anything, it is the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child."

The text then follows with an edited version of *Roe v. Wade,* including excerpts of Parts I, V, VII–XI and from Justice Rehnquist’s dissent. It notes that Justice Stewart concurred but no further information is given about the opinion. Directly after the edited *Roe v. Wade* opinion, there is a short paragraph mentioning the companion case, *Doe v. Bolton,* and noting that the concurring and dissenting opinions in that decision were addressed to both *Roe v. Wade* and *Doe v. Bolton.* Following this paragraph summary, there

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254. *Id.* at 1082.
255. *Id.* at 1082–92.
256. *Id.* at 1092–94.
257. *Id.* at 1094–95.
258. *ROTUNDA,* supra note 5, at 1095.
259. *VARAT ET AL.,* supra note 6, at 408.
260. *Id.*
261. *Id.* at 408–09.
262. *Id.* at 409–18.
263. *Id.* at 417.
264. *Id.* at 418.
are excerpts of Chief Justice Burger’s concurrence, Justice Douglas’s concurrence, and Justice White’s dissent.\textsuperscript{265}

The textbook next provides an edited version of \textit{Casey}.\textsuperscript{266} The opinion is introduced with a short summary of which Justices joined specific parts and includes portions of: Part I, II, III-A, III-B, III-C, IV, V-A-E, VI, Justice Stevens’ concurrence in part and dissent in part, Justice Blackmun’s concurrence in part, concurrence in judgment, and dissent in part, Chief Justice Rehnquist’s concurrence in judgment in part and dissent in part, and Justice Scalia’s concurrence in judgment in part and dissent in part.\textsuperscript{267} Following the \textit{Casey} opinion, the text includes the excerpted opinion of \textit{Gonzales v. Carhart}, including portions of Parts I-A, I-B, II, III-C, IV-A, IV-B, V, a short paragraph of Justice Thomas’ concurrence, and excerpts from Parts I–IV of Justice Ginsburg’s dissent.\textsuperscript{268}

In addition to the main section addressing the abortion topic, Varat also includes a long excerpt of the \textit{Harris v. McRae} decision, regarding public funding of abortions, under a section in the Equal Protection Chapter entitled “Protection of Personal Liberties.”\textsuperscript{269} The text includes portions of: Parts I–III\textsuperscript{270} of the majority opinion, Justice Brennan’s dissent, Justice Marshall’s dissent,\textsuperscript{271} Justice Blackmun’s dissent, and Justice Stevens’ dissent.\textsuperscript{272} It notes that Justice White concurred but does not include any portion of that opinion.\textsuperscript{273} Apart from the edited versions of these decisions, there is no further discussion of the abortion issue, or citations to relevant journal articles in any notes.

\textbf{CONCLUSION}

The discussion of both euthanasia and abortion is fairly uniform between the five textbooks surveyed. Initially, the texts appear to offer a fairly balanced treatment of abortion and euthanasia. Most texts provide excerpts from articles, as well as citations, that
clearly offer a pro-choice argument. However, after these citations, many texts supply additional citations with parentheticals that promise a contrasting or opposite view. Rather than offering a viable pro-life argument, which a novice may expect from these articles, these “opposite” or “contrasting” views tend to be pro-choice arguments approached from a different perspective. When the text includes literature or arguments from a pro-life point of view, the arguments are discussed briefly compared to the other articles, not allowing the student to fully grasp the argument or the reasons behind it. For example, a number of textbooks include excerpts from Judith Jarvis Thomson’s _A Defense of Abortion_, but not one offers any critique of her article.

The bias also presents itself within the language and quotations selected to discuss issues further illuminating the abortion controversy. One text’s introduction to the topic exemplifies this bias in language most clearly by stating, regarding abortion, that the Court “expanded the right to privacy to assure women the right to abortion.”274 Another book includes an argument that fetuses should be viewed as humans, but then negates any strength of this argument by pairing it with Peter Singer’s discussion of animals being viewed equally with humans.275

As mentioned, these instances of bias are not immediately apparent. It is only after looking at these sources more closely that one becomes aware of the strong pro-choice bias that the textbooks characterize as balanced.

274. FARBER ET AL., _supra_ note 2, at 50.
275. STONE ET AL., _supra_ note 3, at 687.